

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TYRONE P. JAMES,	:	
	:	
Plaintiff	:	
	:	No. 1:CV-01-1015
v.	:	
	:	
	:	(Judge Kane)
YORK COUNTY POLICE	:	(Magistrate Judge Mannion)
DEPARTMENT; AGENT JAMES H.	:	
MORGAN; DET. RICHARD	:	
PEDDICORD; DET. RAYMOND E.	:	Electronically Filed
CRAUL; SGT. GENE FELS; DET.	:	
ANTHONY GLOWCZEWSKI; AGENT	:	
RANDY SIPES; and AGENT BRIAN	:	
WESTMORELAND,	:	
Defendants	:	

**BRIEF IN SUPPORT OF DEFENDANTS' MOTION
TO DEPOSE A PERSON CONFINED IN PRISON**

STATEMENT OF THE CASE

This is a *pro se* inmate's civil action brought pursuant to 42 U.S.C. §1983 by Tyrone P. James ("Plaintiff"). The following Defendants are represented by the Pennsylvania Office of Attorney General in this matter: James Morgan, Brian Westmoreland, Richard Peddicord, Raymond Craul, Gene Fells, Robert Kessler and Anthony Glowczeski ("Defendants").¹ Plaintiff is alleging a variety of

¹ Undersigned counsel does not represent the York Police Department, C/O Baylark or Agent Randy Sipes because these parties are not considered State employees eligible for representation by undersigned counsel.

constitutional violations concerning his arrest on January 10, 2001. Plaintiff's action was commenced on June 8, 2001. Defendants filed a Motion to Dismiss on December 28, 2001, which was granted in part and denied in part on October 8, 2003.

On October 15, 2003, Defendants filed an Answer to the Complaint, and discovery was initiated again. On January 21, 2004, Defendants filed a Motion Seeking Leave of Court to Depose Plaintiff. This Brief is filed in support of that Motion.

STATEMENT OF FACTS

Plaintiff's Complaint sets forth a variety of alleged violations of his constitutional rights. Plaintiff alleges that on January 10, 2001, while he was retrieving mail from Mailboxes Etc., located in York, Pennsylvania, he was approached by several individuals who did not identify themselves as law enforcement officers. (Complaint at ¶¶1 and 2, Amended Complaint at ¶5). Plaintiff had just retrieved a parcel from inside, which claims he dropped and started moving away Defendants. (Complaint at ¶3, Amended Complaint at ¶5).

At that time, Plaintiff alleges he was hit by a van driven by Defendant Glowczeski and thrown to the ground. (Complaint at ¶4 and Amended Complaint at ¶¶5 and 6). While on the ground, Plaintiff alleges that Defendants stepped upon

and trampled him, handcuffed him, took his personal belongings and placed him in the van. (Complaint at ¶4, Amended Complaint at ¶5).

Plaintiff alleges that he was not read his Miranda rights by any Defendant, and that Defendant Morgan interrogated him and denied Plaintiff's requests to telephone his family and an attorney. (Complaint at ¶6 and 10). In addition, Plaintiff alleges that Defendant Peddicord took his personal papers from his wallet. (Complaint at ¶7).

QUESTIONS PRESENTED

SHOULD THE DEFENDANTS BE GRANTED LEAVE TO DEPOSE PLAINTIFF, WHO IS PRESENTLY INCARCERATED AT YORK COUNTY PRISON?

ARGUMENT

THE DEFENDANTS SHOULD BE GRANTED LEAVE TO DEPOSE THE PLAINTIFF.

Defendants should be granted leave to depose Plaintiff who is currently incarcerated at York County Prison. Pursuant to Rule 30 of the Federal Rules of Civil Procedure, the deposition of a prisoner may be taken only by leave of court. A deposition would help to narrow the issues and clarify the facts for a summary judgment or a trial. Therefore, the defendants should be granted leave to depose Plaintiff.

CONCLUSION

For the foregoing reasons, the Court should grant the Defendants' Motion for Leave of Court to Depose Plaintiff.

Respectfully submitted,

**GERALD J. PAPPERT
Acting Attorney General**

**By: s/Jason C. Giurintano
JASON C. GIURINTANO
Deputy Attorney General
I.D. No. 89177**

**Office of Attorney General
Civil Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120**

Date: January 21, 2004

**SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

Counsel for Defendants**

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ANTHONY GLOWCZEWSKI; AGENT	:	
RANDY SIPES; and AGENT BRIAN	:	
WESTMORELAND,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I, Jason C. Giurintano, Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on January 21, 2004, I caused to be served a true and correct copy of the foregoing document entitled Brief in Support of Defendants' Motion For Leave To Depose A Person Confined In Prison by depositing same in the United States Mail, first-class postage prepaid to the following:

Tyrone P. James, #62154
York County Prison
3400 Concord Road
York, PA 17402

Donald L. Reihart
Law Office of Donald L. Reihart
2600 Eastern Blvd., Suite 204
York, PA 17402

s/Jason C. Giurintano
JASON C. GIURINTANO
Deputy Attorney General